

REMARKS

Applicant wishes to thank the Examiner for the consideration given this case to date. Applicant has now had an opportunity to carefully consider the Examiner's action, and respectfully submits that the application, as amended, is now in condition for allowance. Currently, claims 1, 2, 5-8 and 10 are pending.

THE EXAMINER'S ACTION

In the Office Action dated February 17, 2004, the Examiner:

rejected claims 1-3, 5-8 and 10 under the judicially created doctrine of obviousness-type double patenting over Sandberg, U.S. Patent No. 6,069,129 (the “‘129 patent”) in view of Kligman, U.S. Patent No. 4,877,805 (“Kligman”) and Sheffield, EP Appln. No. 0-339-0905 (“Sheffield”);

rejected claims 1-3, 5-8 and 10 under 35 U.S.C. § 103(a) as being obvious in light of Sandberg, WO 99/95941 in view of Kligman and Sheffield; and

rejected claims 1-3 and 5-8 and 10 under 35 U.S.C. § 103(a) as being obvious in light of the ‘129 patent in view of Kligman and Sheffield.

The Examiner also noted, in paragraph 3 of the Office Action, that claims 1, 6, and 10 recite nonelected inventions.

DOUBLE PATENTING

The Office has rejected claims 1-3, 5-8 and 10 under the judicially created doctrine of obviousness-type double patenting over the ‘129 patent in view of Kligman and Sheffield. In paragraph 5 of the February 17, 2004 Office Action, the Office stated:

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application comprise SEQ ID NO: 17 both in composition and a method of treatment (skin enhancement) as required by the claims of ‘129.

Claims 1, 5, 6, 7 and 10 have been amended to remove recitation of SEQ ID NO: 17. Claim 2 depends from claim 1. Claim 8 depends from claim 7. Claim 3 has been canceled.

Absent recitation of SEQ ID NO: 17 in the amended claims, the use of the '129 patent as a reference is obviated. Applicants respectfully submit that the rejection has now been overcome.

REJECTIONS UNDER 35 U.S.C. § 103

The Office has rejected claims 1-3, 5-8 and 10 under 35 U.S.C. § 103(a) as being obvious in light of Sandberg, WO99/45941, in view of Kligman and Sheffield. The Office has also rejected claims 1-3, 5-8 and 10 under 35 U.S.C. § 103(a) as being obvious in light of the '129 patent in view of Kligman and Sheffield. The Office stated that both the WO99/45941 reference (paragraph 14 of February 17, 2004 Office Action) and the '129 patent (paragraph 24 of February 17, 2004 Office Action) teach SEQ ID NO: 17.

As discussed above, claims 1, 5, 6, 7 and 10 have been amended to remove recitation of SEQ ID NO: 17. Claim 2 depends from claim 1. Claim 8 depends from claim 7. Claim 3 has been canceled. Absent recitation of SEQ ID NO: 17 in the amended claims, the use of either the WO99/45941 reference or the '129 patent as a reference is obviated.

Applicants respectfully submit that the rejections have now been overcome.

RECITATION OF NONELECTED INVENTIONS

The Office has pointed out (see paragraph 9 of the February 17, 2004 Office Action) that Applicants previously elected (with traverse), Group I claims drawn to a composition containing a retinoid and "a peptide," rather than Group II claims drawn to a composition containing a retinoid and "a combination of peptides," in response to the restriction requirement mailed April 7, 2003. Yet, states the Office, claims 1, 6 and 10 recite combinations of peptides.

Applicants have amended claims 1, 6 and 10 to recite compositions containing a retinoid (or skin enhancing agent) and a peptide. The amended claims now recite elected inventions.

ADITIONAL CLAIM AMENDMENTS

Claim 10 has been amended to depend from claim 8, rather than from claim 7. In the originally filed application, claim 10 depended from claim 9, where claim 9 recited the retinoid, tretinoin. In an earlier amendment, claim 9 was canceled and claim 8 was amended to recite

tretinoin. At the time of the earlier amendment, however, claim 10 was mistakenly amended to depend from claim 7. The present amendment makes the correction.

Claims 5 and 10 were also amended to delete SEQ IDs 45-51. Amended claims 5 and 10 now more narrowly claim the peptides recited in claims 2 and 8, from which they depend, respectively.

Finally, in order to be consistent with the other claims, claims 5 and 10 were amended to include a colon before recitation of the Markush Group.

CONCLUSION

Applicant appreciates the Examiner's attention to this matter. It is not believed that any fees are due with this Amendment. However, if there are fees due, please charge any additional fees to Deposit Account 02-2051 referencing Attorney Docket No. 25812-74.

Respectfully submitted,

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